

**State of California
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation**

**AMENDED NOTICE OF MODIFICATION TO TEXT OF
PROPOSED REGULATIONS**

Subject Matter of Regulations: Return to Work

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
SECTIONS 10001 – 10005**

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, and 4603.5, proposes to modify the text of the following proposed amendments to Title 8, California Code of Regulations:

Section 10002 Offer of Work; Adjustment of Permanent Disability Payments

**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION
OF WRITTEN COMMENTS**

Members of the public are invited to present written comments regarding these proposed modifications. **Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Maureen Gray, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than **5:00 p.m. on Wednesday, February 22, 2006**. Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@hq.dir.ca.gov.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 1515 Clay Street, 17th Floor, Oakland, California.

Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

The specific modifications proposed include changes to the text of the proposed amendments Title 8, California Code of Regulations:

Section 10002 Offer of Work; Adjustment of Permanent Disability Payments

DOCUMENTS SUPPORTING THE RULEMAKING FILE

- Comments from various interested parties concerning the regulations have been added to the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

The new text is indicated by underlining, thus: underlined language.

Proposed Text Noticed for This 15-Day Comment Period on Modified Text:

Deletions from the regulatory text, as proposed in October 2005, are indicated by double strike-through, thus: ~~deleted language~~.

Additions to the regulatory text, as proposed in October 2005, are indicated by a double underline, thus: added language.

SUMMARY OF PROPOSED CHANGES

Modifications to Section 10002 Offer of Work; Adjustment of Permanent Disability Payments

Subdivision (c) was amended to clarify that in order to be entitled to withhold 15% when there is a dispute regarding the permanent and stationary date, the claims administrator must have relied upon a permanent and stationary date contained in a medical report prepared by the employee's treating physician, QME, or AME. The proposed modification replaced the words "In the event there is" with : "If the claims administrator relies upon a permanent and stationary date

contained in a medical report prepared by the employee's treating physician, QME, or AME, but there is subsequently"

Subdivision (f) was added to address the situation where an employee has made an offer of regular, modified or alternative work to an injured employee and subsequently learns that the employee is an undocumented worker. The language is based on the holding of *Del Taco v. WCAB* (2000) 79 Cal.App.4th 1437. The proposed text states:

(f) When the employer offers regular, modified or alternative work to the employee that meets the conditions of this section and subsequently learns that the employee cannot lawfully perform regular, modified or alternative work due to the employee's immigration status, the employer is not required to provide the regular, modified or alternative work.

Subdivision (g) was added to address the situation where the injured employee is seasonal worker. The language is based on the holding of *Henry v. WCAB* (1998) 68 Cal.App.4th 981. The proposed text states:

(g) If the employer offers regular, modified, or alternative work to the employee for 12 months of seasonal work, the offer shall meet the following requirements:

(1) the employee was hired on a seasonal basis prior to injury;

(2) the offer of regular, modified or alternative work is on a similar seasonal basis to the employee's previous employment, and

(3) The offer meets the conditions set forth in this section.

The references are modified to cite the legal authorities: *Del Taco v. WCAB* (2000) 79 Cal.App.4th 1437 and *Henry v. WCAB* (1998) 68 Cal.App.4th 981.